vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2511 OF 2005

Shri Rajendra Kumar Babulal Gugale ... Petitioner

V/s.

Shri Vishnu Sadashiv Badade & Ors. ... Respondents

Mr.V.B. Naik for Petitioner
Mr.S.V. Pitre for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 28, 2005**

P.C.:

. This Petition has been filed to challenge the order passed by the 3rd Additional District Judge, Pune in Miscellaneous Civil Application No.762 of 2000. This Miscellaneous Application was filed under Order 41 Rule 21 of the Code of Civil Procedure for rehearing of the appeal which was decided ex-parte. Miscellaneous Civil Application No.743 of 1999 was filed for condoning the delay caused in filing the application for restoration of the Civil Appeal No.565 of 1989. The delay was condoned by an order dated 9.8.2000. While condoning the delay, the Court considered the fact that sufficient cause had been made out which established that the Petitioner was prevented from remaining present when the appeal was heard. The Court also accepted the reason

mentioned by the Petitioner for the delay in filing the restoration application. On this ground, the learned Judge held that the delay ought to be condoned on payment of costs of Rs.1000/-. Accordingly, it was further directed that the application for rehearing of the appeal filed under Order 41 Rule 21 of the Code should be registered and processed in accordance with law. When this application was heard by the same learned Judge, he thought it fit to reject the application. The reason for not attending the Court when the appeal was heard was the same the reason mentioned in the Miscellaneous Civil Application No.743 of 1999, the application for condoning the delay. Surprisingly, the learned Judge has rejected the application while the earlier application, to condone the delay, was allowed on the same grounds.

2. In my view, this order must be set aside. In the circumstances, Petition is allowed. Civil Appeal No.565 of 1989 is restored to file and shall be heard and disposed off on merits within three months from today.

3. Writ to go down immediately.